FOIP FOLIO

SASKATCHEWAN

December 2005

MERRY CHRISTMAS

Capsule Review of 2005

This has been a busy and productive 2005 in terms of access and privacy in Saskatchewan. We are grateful for the excellent cooperation we have enjoyed in our dealings with regional health authorities, school divisions, colleges and universities, municipalities, government departments, boards, commissions and agencies and Crown Corporations. So many of you are working hard in your organizations to raise the bar in terms of compliance with *The Freedom of Information and Protection of Privacy Act* (FOIP), *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and *The Health Information Protection Act* (HIPA) and best practices for access to information and privacy. Many Saskatchewan organizations have identified FOIP Coordinators to provide leadership on the access and privacy files in their respective organizations. An increasing number of those FOIP Coordinators are enrolled in the University of Alberta's Information Access and Protection of Privacy (IAPP) Certificate Program - Canada's only online access and privacy university certificate program. Congratulations to all of you who have achieved a great deal in terms of promoting understanding of what these laws require and meeting the legitimate expectations of provincial residents. We look forward to working with each of you to continue this progress in 2006!

Best wishes of the season from Candace, Diane, Sandra and Gary in the Saskatchewan Office of the Information and Privacy Commissioner (OIPC).
See you in 2006!

When Can An Employer Disclose Personal Information To A Union Without Your Consent?

The British Columbia Court of Appeal recently considered the question of whether an employer could disclose personal information about an employee to the union without the employee's consent. The information was from job applications to a bus company. The Court held that section 33.2(a) of the B.C. FOIP Act allows the employer to disclose certain personal information to the union so that the union can monitor the employer's compliance with collective agreement requirements about job postings and hiring. The Saskatchewan equivalent is section 29(2)(t). The decision is Canadian Office and Professional Employees' Union, Local 378 v. Coast Mountain Bus Company Ltd., 2005 BCCA 604. This decision is also available online at www.courts.gov.bc.ca/Jdb-txt/CA/05/06/2005BCCA0604.htm.

Merry Christmas

Two Federal Commissioners Better Than One

Late in November Gerard La Forest, formerly a Supreme Court of Canada judge, completed his report concerning the possible merger of the offices of the federal Information Commissioner and the federal Privacy Commissioner. Justice La Forest concluded that the two offices should not be merged. He also recommended that government must do much more to foster a "culture of compliance". To that end, government should:

- Make it clear to officials that access should be provided unless there is a clear and compelling reason not to do so;
- Develop better information management systems;
- Ensure adequate training for access officials;
- Create proactive dissemination policies; and
- Provide adequate incentives for compliance.

With respect to privacy, government should:

- Pay greater attention to the implications of programs involving the sharing, matching and outsourcing of personal information;
- Ensure adequate training for privacy officials; and
- Develop comprehensive privacy management frameworks.

Justice La Forest's conclusions are consistent with the recommendations of our office. Many of his recommendations are relevant to the kinds of things we need to do in Saskatchewan. The OIPC letter to Justice La Forest is dated October 20, 2005 and available at www.oipc.sk.ca under What's New. The La Forest report (59 pages) is available at www.justice.gc.ca/en/pl/toc.html and should be of interest to any Saskatchewan FOIP Coordinator or Privacy Officer.

Your Privacy Will Outlast You!

You may be surprised to learn that your privacy does not end when you die. Personal information about an individual held by government must be protected for 25 years after your death. [FOIP s. 30(1) and LA FOIP s. 29(1)] Your personal health information must be protected for 30 years after you die. [HIPA s. 3(2)(b)]

Like all laws there are some exceptions. Your executor may obtain information in order to probate your will and manage your assets. Your immediate family and close friends may obtain information about how you died. Sometimes there is a compelling public interest that would justify disclosing some of your personal health information long before the end of the 25 or 30 year period.

Merry Christmas

The Power of One

The first report of Mr. Justice Gomery into the federal sponsorship scandal is now available. This details how the sponsorship program was run and the kinds of problems associated with that program. Three of his findings that are relevant to freedom of information are:

- *A veil of secrecy surrounding the administration of the Sponsorship Program and an absence of transparency in the contracting process;*
- *Reluctance, for fear of reprisal, by virtually all public servants to go against the will of a manager who was circumventing established policies and who had access to senior political officials;*
- *Deliberate actions to avoid compliance with federal legislation and policies, including the Access to Information Act.*

There are important lessons for all governments in Canada and these include the important role played by FOIP type legislation in ensuring governments are transparent when they are spending public dollars.

It is significant that it was an access to information request by a reporter that, in many respects, led to the Gomery Inquiry.

We are looking forward to the second report due in February. This apparently will focus on what changes are necessary to laws and policy to minimize the risk of something like the abuses associated with the Sponsorship program happening again.

Online Rights Canada

Concerned about federal government plans for electronic surveillance? Worried about the proposal to require communication providers to build surveillance backdoors in the equipment that routes telephone and Internet communication? The Canadian Internet Policy & Public Interest Clinic has partnered with the U.S. based Electronic Frontier Foundation to create Online Rights Canada. This new NGO is intended to undertake advocacy on digital issues. For more information contact www.onlinerights.ca.

Canada's Newest Health Information Law Displaces PIPEDA

On November 28, 2005, the federal Cabinet declared that Ontario's new Personal Health Information Protection Act, 2004 (PHIPA) is "substantially similar" to the federal PIPEDA (*Personal Information Protection and Electronic Documents Act)*. In the result, health custodians in Ontario need only focus on PHIPA compliance. This is not the case in Saskatchewan where both the federal PIPEDA and HIPA (*Health Information Protection Act)* will continue to apply to physicians, pharmacists, dentists and other trustees engaged in "commercial activities".

Merry Christmas

Watch your Blackberry

Treasury Board has issued advice to all federal employees on the use of the Blackberry and security issues. This includes the following:

> "The Access to Information and Privacy and Library and Archives Canada legislation and policies requires that the actions and decisions of public servants are properly documented. It is expected that when significant information is exchanged or decisions are made in the course of a telephone call or via e-mail, that the parties will take the necessary steps to ensure that a record of the exchange is created and properly stored and managed. Text messages exchanged via a wireless device are similar in this way to either telephone conversations or e-mail messages. A record of such an exchange may be easily created by forwarding a copy of the message to the departmental file system.
>
> ...
>
> Blackberry...devices are no more secure than normal cell phones. Thus the same security precautions must be applied to their use and they should never be used for communicating or storing confidential or sensitive information."

The Saskatchewan Information Technology Office (ITO) had earlier addressed this subject in its Security Bulletin #2005-001. The use of the Blackberry by any government institution in this province must be accordance with PSC 1103-Information Technology Acceptable Usage Policy. This is available at http://www.gov.sk.ca/psc/hrmanual/ps1103.pdf.

Blackberries must be disposed of in accordance with the SPMC Electronic Media disposal policy. These devices are also subject to document retention guidelines outlined in the Archives Act. ITO Deputy Minister, Don Wincherauk has advised the OIPC that such devices must also meet strict password requirements.

Future Events

January 18-19, 2006 -- Health Information Privacy and Security, Metropolitan Hotel, Toronto, Ontario; (www.insightinfo.com or 1-888-777-1707 for details)

February 3, 2006 -- Employee privacy issues - Canadian Bar Association (Saskatchewan) Midwinter Meeting, Moose Jaw, Saskatchewan

To Contact us:

Office of the Saskatchewan Information and Privacy Commissioner
503 - 1801 Hamilton Street
Regina, Saskatchewan, S4P 4B4
Telephone: (306) 787-8350 / Toll Free: 1-877-748-2298
Fax: (306) 798-1603
E-mail: webmaster@oipc.sk.ca
Website: www.oipc.sk.ca

Merry Christmas